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the Elimination
of all Forms of
Racial Discrimination

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OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Thirteenth periodic report of States parties due in 1997

Addendum

Austria*

[11 May 1998]

* This document contains the eleventh, twelfth and thirteenth periodic reports of Austria, due on 8 June 1993, 1995 and 1997, respectively, submitted in one document. For the ninth and tenth periodic reports of Austria and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/209/Add.3 and CERD/C/SR.947, 951.

The information submitted by Austria in accordance with the consolidatd guidelines for the initial part of the reports of States parties is contained in the basic document HRI/1/CORE/Add.8.

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I. GENERAL REMARKS

1. When ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, Austria has adopted a special Constitution Act in order to ensure the implementation of the Convention in Austrian law. This Federal Constitution Act of 3 July 1973, implementing the International Convention on the Elimination of All Forms of Racial Discrimination, provides that any kind of discrimination on racial grounds is prohibited. "Legislation and administration must both refrain from making distinctions on the sole basis of race, skin, colour, descent, or national or ethnic origin."

2. This special Constitution Act against racial discrimination thus prohibits

(a) The Parliament from passing laws with racially discriminatory contents;

(b) The Administration from exercising racial discrimination on a general or individual basis, and offers everyone the opportunity to challenge laws, orders or specific administrative decisions before the Constitutional Court by claiming that they contain racially discriminatory language.

3. In a judgement of 2 July 1994, the Constitutional Court interpreted these provisions as follows: "The wording of this Constitution Act indicates that it does not include all forms of differential treatment applicable to nationals from different countries or to persons of different national origins. It only prohibits the lawmakers from passing different rules for nationals from different countries without substantive justification; the constitutional law quoted above is therefore only infringed by those rules which put nationals from certain countries at a disadvantage on grounds that are not substantively justified but rather - unlike the provisions of the Aliens' Act in issue here - discriminate against a nationally distinguishable group of aliens solely on the basis of their national origin." In this judgement, the Court found it admissible to issue regulations on visa requirements in connection with the entry of nationals from countries not belonging to the European Economic Area.

4. In a judgement of 29 June 1995, the Constitutional Court gave the above-mentioned Constitution Act an even wider meaning. The Court not only held the view that it is forbidden under the law to issue different rules that are not substantively justified to apply to nationals from different countries, but also found that this Constitution Act contained a general ban on substantively unjustifiable distinctions by lawmakers and administrative authorities. The law therefore required that aliens be given equal treatment; differential treatment of aliens was only admissible if and when there was a reasonable justification and the treatment was not disproportionate. The Court thus held that the rule of equal treatment also applied to relationships among aliens. The Constitutional Court has since followed this case-law, which means that it has further extended the conclusions to be derived from

the principle of equality with regard to Austrian citizens in such a way that they are also applicable to aliens. This can be seen, for instance, from the judgement of 30 November 1995, in which the Court stated as follows:

> "In its constant case-law, the Constitutional Court has taken the position, in its review of administrative decisions under the aspect of the right to equal treatment only being granted to Austrian nationals, that this constitutionally guaranteed right has been violated, inter alia, if the reasons for the decision given by the authority is completely unjustified. This must in the Court's view apply even more so to those cases where an administrative authority altogether refrains from providing a reason for its decision. Such a mistake must thus also be taken into consideration if the decision affects an alien because, as has also been previously ruled by the Constitutional Court, the Federal Constitution Act implementing the International Convention on the Elimination of All Forms of Racial Discrimination generally prohibits both lawmakers and administrative authorities from making substantively unjustifiable distinctions among aliens and thereby stipulates that all aliens must be given equal treatment. Decisions refusing an alien equal treatment may only be admissible if and when there is a reasonable justification and the degree of inequality is not disproportionate. This equal treatment rule granted to aliens as a subjective right under the said Constitution Act is violated by a substantively unfounded decision in the same manner as the principle of equality granted exclusively to Austrian nationals under the above case-law."

The Constitutional Court therefore quashed the administrative decision challenged in the case in issue.

5. With this judgement, the Constitutional Court has adopted an approach which significantly contributes to the equal treatment of aliens and hence to the fight against racial discrimination.

6. The fight against racism and xenophobia and the protection of minorities are prime objectives of Austrian policy-making. Austria has advocated, in numerous international organizations including the Council of Europe, the United Nations and the European Union, to adopt all appropriate measures which may help to combat racism.

7. The Republic of Austria is still prepared to grant political asylum to persons suffering from political persecution. As regards other foreigners, the focus of Austrian policy is on giving priority to the integration of aliens already in the country over accepting new arrivals.

8. With the Aliens Act of 1997, special regulations designed to promote integration were adopted. The aim of the Austrian integration assistance policy is to ensure the participation of foreigners in Austrian economic, cultural and social life and to provide equal opportunities with Austrian citizens in these areas. Intended measures to strengthen integration include language courses, courses for training and further education, lectures on Austrian culture and history, programmes organized jointly with Austrian nationals to promote mutual understanding, and the dissemination of information on the housing market.

9. The implementation of the integration assistance policy will preferably be ensured by private, humanitarian and religious organizations and by welfare and community institutions. The requisite services will be laid down in a private law contract which will also settle the question of reimbursement.

10. To assist the Federal Minister of the Interior, who has responsibility for integration assistance matters, an Advisory Committee on Integration was established whose task is to make recommendations on concrete integration issues including the implementation and funding of integration assistance measures. Members of the Committee are the social partners and humanitarian and religious institutions.

II. SPECIFIC PROVISIONS OF THE CONVENTION

Article 2

11. Apart from the previously mentioned Federal Constitution Act, which prohibits racial discrimination, the obligations arising from article 2 of the Convention are fulfilled by criminal law regulations. Special mention should be made of section 283 of the Penal Code, which serves that purpose and which reads as follows:

> "Anyone who, in a manner apt to jeopardize the public order, encourages or incites hostile actions against a Church or religious denomination or a group characterized by its affiliation with such a Church or religious denomination, race, nation, ethnic group or State shall be punished with imprisonment of up to two years.
>
> "Punishment will similarly be imposed on anyone who publicly stirs up hatred against one of the groups designated in paragraph 1 or in a manner violating their human dignity tries to slander them or hold them in contempt."

12. In passing this law it was the legislators' explicit intention to comply with the obligations under the Convention. This is particularly important since there is unanimity that the above provision of the Penal Code, to the extent that it relates to racial discrimination, must be interpreted within the meaning of the Convention.

13. In this context, the Constitutional Act Prohibiting the National Socialist German Workers' Party (NSDAP) is also relevant because its ideology was also characterized by racism and anti-Semitism. Under this law it is forbidden for anyone to engage in any kind of activity on behalf of the NSDAP or its goals. The resumption of such activities constitutes a punishable offence. Furthermore, anyone shall be subject to punishment who, in print, broadcast or any other type of media, or otherwise in a manner apt to make it accessible in public to a large number of persons, denies or grossly plays down or approves of or attempts to justify the National Socialist genocide or other National Socialist crimes against humanity.

14. In Austria, there are six ethnic groups, namely Croats, Slovenes, Hungarians, Czechs, Slowaks and Roma. The legal status of the ethnic groups in Austria is regulated by the Ethnic Group Act of 1976. The Act defines an

ethnic group as one which comprises those groups of Austrian citizens with non-German mother tongue and an autonomous heritage who have their residence and home in a part of the Austrian federal territory. Everyone is free to declare their affiliation with an ethnic group. The law expressly states that no one belonging to an ethnic group must be put at a disadvantage as a result of the assertion or non-assertion of their rights as members of that ethnic group. Moreover, nobody can be forced to provide evidence of his or her affiliation with an ethnic group.

15. Particular importance must be accorded to the provisions of section V entitled "Protection of minorities" of the Third Part of the State Treaty of St. Germain of 10 September 1919, which still forms part of the Austrian Federal Constitution. These provisions read as follows:

"Article 62

Austria undertakes that the stipulations contained in this Section shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

"Article 63 (1)

Austria undertakes to assure full and complete protection of life and liberty to all inhabitants of Austria without distinction of birth, nationality, race or religion.

"(2)

All inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals.

"Article 64

Austria admits and declares to be Austrian nationals *ipso facto* and without the requirement of any formality all persons possessing at the date of the coming into force of the present Treaty rights of citizenship (pertinenza) within the Austrian territory who are not nationals of any other State.

"Article 65

All persons born on Austrian territory who are not born nationals of another State shall *ipso facto* become Austrian nationals.

"Article 66 (1)

All Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

"(2)

Differences of religion, creed or confession shall not prejudice any Austrian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

"(3)

No restriction shall be imposed on the free use by any Austrian national of any language in private intercourse, in commerce, in religion, in the press, or in publications of any kind, or at public meetings.

"(4)

Notwithstanding any establishment by the Austrian Government of an official language, adequate facilities shall be given to non-German-speaking Austrian nationals for the use of their language, either orally or in writing, before the courts.

"Article 67

Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

"Article 68 (1)

Austria will provide in the public educational system in towns and districts in which a considerable proportion of Austrian nationals of other than German speech are resident adequate facilities for ensuring that instructions in primary schools shall be given to the children of such Austrian nationals through the medium of their own language. This provision shall not prevent the Austrian Government from making the teaching of the German language obligatory in the said schools.

"(2)

In towns and districts where there is a considerable proportion of Austrian nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes."

16. Under article 7 of the Vienna State Treaty of 15 May 1955, the Slovene and Croat minorities were granted special rights. The five paragraphs of article 7 read as follows:

"1. Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights as all other Austrian nationals, including the right to their own organizations, meetings and press in their own language.

"2. They are entitled to elementary instruction in the Slovene or Croat language and to a proportional number of secondary schools; for this purpose, school curricula shall be reviewed and a section of the Inspectorate of Education shall be established for Slovene and Croat schools.

"3. In the administrative and judicial districts of Carinthia, Burgenland and Styria with Slovene, Croat or mixed populations, the Slovene or Croat languages shall be accepted as official languages in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croat language as well as in German.

"4. Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals.

"5. The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority capacity or rights shall be prohibited."

17. In the educational sector, special minority schooling laws for Burgenland and Carinthia were adopted. Additionally, in both *Länder* regional laws are also in force. These laws stipulate that pupils in those schools which are provided for by law must be granted the right to use the Slovene, Croat or Hungarian languages or to learn them on a compulsory basis if this is desired by their parents. Students' participation in courses in one of the above languages is subject to their explicit registration at school entry. Generally, the law provides for two forms of schooling, namely either in elementary and lower-level secondary schools (*Volksschulen, Hauptschulen*) with exclusive teaching in Slovenian, Croatian or Hungarian, or in bilingual primary schools with German as a language of instruction along with the minority language. In bilingual elementary schools, all teaching on the pre-school level and in grades 1 to 4 must be conducted in German in conjunction with a minority language.

18. There is no link whatsoever between a person's right to elementary schooling and his or her affiliation with a minority. Instead, the question of an individual's affiliation with a minority is solely determined on the basis of commitment. For someone to assert minority rights, it is therefore not necessary that they provide evidence of their affiliation to a minority. Any student wishing to assert his or her right to receive schooling in a minority language can do so without having to prove that he or she actually

belongs to that minority. Another consequence of this law, as the Constitutional Court held in its judgement of 1 December 1989, is that a sufficient number of schools must be ensured in order for every school-age member of a minority to be able to use his or her right to receive elementary schooling in the language of that minority. Here it must also be noted that the right to receive elementary schooling in the minority language is guaranteed by the Constitution and that any violation of this right can be invoked before the Constitutional Court.

19. In addition to the elementary and lower-level secondary schools with teaching in the above minority languages, there is a separate upper-level secondary school (grammar school) each for the Croat and Slovene ethnic groups in Burgenland and Carinthia.

20. As regards the use of Slovenian or Croatian as official languages, the Constitutional Court has ruled that anyone residing in the territories designated in article 7 (3) of the Vienna State Treaty and wishing to use the minority language before the courts or administrative authorities can do so without proof of his or her minority affiliation. Such an interpretation, the Court held, was in conformity with the fundamental principle of minority protection which states that it is not necessary in each case to prove one's affiliation to a given minority as this may occasionally lead to discrimination.

21. Specific rules concerning the use of the Slovene and Croat languages before judicial courts or administrative authorities are laid down in the Ethnic Group Act. We shall therefore not go into further detail regarding the use of Slovenian and Croatian as official languages.

22. The Ethnic Group Act also provides for the establishment of ethnic group advisory councils. Under section 3 of the Act, the Federal Government and the Federal Ministers shall be assisted in ethnic matters by so-called Ethnic Group Advisory Councils to be installed at the Federal Chancellery. Their task is to observe and represent the integral cultural, social and economic interests of the ethnic groups and they must be heard prior to the adoption of legal rules and general assistance policies affecting the interests of their ethnic group. The Ethnic Group Advisory Councils may also submit proposals for the improvement of the situation of the ethnic groups and their members.

23. The members of the Ethnic Group Advisory Councils are appointed by the Federal Government for a four-year term. Membership of an Ethnic Group Advisory Council is only possible for persons who may be expected to support the interests of the ethnic group and the aims of the Ethnic Group Act, who are eligible for election to the National Assembly, who are members of a general representative body such as a local council or a regional parliament, and who are members of a specific ethnic group or have been elected into a general representative body on account of their affiliation to that ethnic group. One half of the members of each Ethnic Group Advisory Council must be composed of members proposed by an association which under its statutes represents the interests of the ethnic group and is a representative of the ethnic group concerned. In addition to these two groups of members, other persons sitting on the Ethnic Group Advisory Councils are those persons who as members of an ethnic group are proposed by a Church or religious community.

Members of the Ethnic Group Advisory Councils with a mere consultative function include one representative from each of the political parties represented in the National Assembly. There are currently six Ethnic Group Advisory Councils with 6 to 24 members.

24. The most important function of the Ethnic Group Advisory Councils in everyday practice is their participation in ethnic group assistance activities. No later than on 1 May of every year, each Ethnic Group Advisory Council must submit to the Federal Government a plan on requested aid measures including a list of expected costs for the following calendar year. The Councils must also, on the basis of this plan, make proposals for the utilization of funds earmarked under that plan. Funds available at present amount to S 50 million.

25. Funding is mainly provided for the staging of cultural events which are designed to strengthen the identity of the ethnic groups and for regular activities within their associations. Eligible projects for financial assistance include the construction of cultural centres, the purchase of books, the repair of meeting facilities, the support of theatrical companies, and the publication of newsletters.

Article 3

26. Apartheid does not exist in Austria.

27. The system of apartheid has repeatedly been condemned by Austria.

Article 4

28. The obligations arising from article 4 of the Convention are fulfilled under Austrian law as follows.

29. Reference must first be made to the above-mentioned provision of section 283 of the Penal Code, which makes the conduct of rabble-rousing propaganda against a racial, national or ethnic group a punishable offence. Likewise, the Federal Constitution Act implementing the Convention prohibits any kind of racial discrimination. Section 281 of the Penal Code makes the act of incitement to disobey the law a punishable offence. The relevant provision reads as follows:

> "Anyone who in print, broadcast or any other manner which may be apt to make it accessible to the public, engages in the incitement of general disobedience of a law shall be punished with imprisonment of up to one year."

30. On the basis of these two provisions taken together, propaganda in the sense of racial discrimination is a punishable offence even if it is not rated as rabble-rousing within the meaning of section 283 of the Penal Code.

31. Under the Constitutional Act Prohibiting the National Socialist German Workers' Party, anyone who founds an organization whose purpose is to undermine the autonomy and independence of the Republic of Austria or to disturb the public peace or the Austrian reconstruction process through the

activities of its members in a National Socialist sense, or who plays a leading role in such an organization, shall be deemed to have committed a criminal offence. Since racism was and still is a key element of National Socialist ideology, this law provides a legal basis to meet the obligations under article 4 of the Convention.

32. Under the law pertaining to societies and associations, the latter must not take decisions that are in violation of the Penal Code. If an association does not comply with that rule or otherwise fails to meet the requirements of the law, it may be dissolved. This is the legal foundation on which associations launching into activities described in article 4 of the Convention may be dissolved. On the same grounds, the founding of an association may also be forbidden as provided for by law if the purpose of that association is unlawful.

Article 5

33. The ban on racial discrimination contained in the Federal Constitution Act implementing the Convention covers the entire range of public life and institutions including judicial courts and administrative authorities. Therefore, the ban also covers all of the rights stated in article 5 of the Convention. No difference is made between Austrian citizens and foreigners. The fact that foreigners in some regards are not on an equal footing with Austrian nationals, including the fact that they are excluded from parliamentary elections or that they require a work permit to obtain a job, is not justified by a distinction on the basis of race, colour or national or ethnic origin and is covered by article 1 of the Convention.

34. As a means of safeguarding the right guaranteed under article 5 (f), a special criminal provision has been introduced. Under that provision, anyone who publicly puts persons at a disadvantage solely on account of their race, colour, national or ethnic origin, or religious belief shall commit a punishable offence. It shall also be a punishable act for anyone who, for the reasons stated above, prevents others from entering places or using services intended for public use. With the latter provision, an effective means of implementing article 5 (f) of the Convention was created.

Article 6

35. Measures of racial discrimination issued by a court or administrative authority may be challenged by lodging an appeal with a higher instance. Since racial discrimination is prohibited, racially discriminatory acts committed by a court or administrative authority are substantively unlawful. The substantive unlawfulness of a given decision can be claimed before a higher court or administrative authority. In accordance with the rule of law, the competent administrative authority or court of appeal is responsible, in the case of racial discrimination, to create a situation in which racial discrimination is eliminated.

36. If an act of racial discrimination is found to be a decision by a supreme administrative authority with no higher instance above it, an appeal to the Constitutional Court is admissible. As the ban on racial discrimination is tantamount to the constitutional right of everyone not to be

discriminated against on racial grounds which is contained in the Federal Constitution Act implementing the Convention, an appeal to the Constitutional Court is admissible under article 144 of the Austrian Federal Constitution because such an offence constitutes a violation of a constitutionally guaranteed right.

37. Any damage resulting from a racist act by an administrative authority or court may be challenged by a claim for indemnification against the State (federal, regional or communal government). Such claims are governed by the pertinent provisions of the Civil Code. If a harmful racist act is committed by a private individual, claims for damages may be asserted against the offender. In this context, section 1330 of the Civil Code should be noted which reads as follows:

> "(1) Anyone who, as a result of defamation, has suffered a true damage or loss of profit is entitled to claim compensation.
>
> "(2) This is also true if somebody disseminates information which jeopardizes another person's credit, earnings or progress although he or she knows or must know that they are false. In such a case, the complainant may request that such information is revoked and the revocation published. With regard to non-public statements the untruth of which is not known to the informant, no liability must be borne by the latter provided that he or the recipient of the information has a justified interest in that information."

38. It is an aim of educational syllabus policy in Austrian schools for students to be taught an understanding of fundamental freedoms and human rights which is appropriate for their age. These courses are mainly given within the scope of compulsory teaching in History and Social issues. The aim of such courses is to help students acquire independent judgement and social knowledge, to open up their minds to other people's political and ideological ways of thinking, and to enable them to take part in the economic and cultural life of Austria, Europe and the world at large and to participate in the discharge of the common tasks of mankind in a spirit of freedom and peace-mindedness.

39. The best way of promoting sympathy, tolerance and friendship is to encourage a spirit of understanding for other persons and their individuality. Student exchange programmes enabling students to attend schools abroad and to live with the families of students in other countries have become as successful an institution as the holiday camp concept that brings together children and students from different nations. The same goals can also be served by scholarships for foreigners in this country and for Austrian nationals abroad.

40. A special emphasis must be placed on the fight against anti-Semitism. The campaign against anti-Semitism, which was launched in 1955, has been particularly active for 40 years, with a programme of panel discussion meetings and teacher training seminars. For some years now, there has been an annual award of an Ernst Bloch Medal to persons who have excelled in the fight against anti-Semitism. In Innsbruck, a private association by the name of

Gedenkdienst (Memorial Service) was founded in 1992 which enables young Austrian conscripts to discharge their one-year alternative service duty at Holocaust memorial sites abroad.

41. The Jewish museums in Eisenstadt, Hohenems and Vienna put on regular exhibitions dealing with Jewish issues. Every year, an international scientific symposium is organized in St. Pölten by the Institute for the History of Jews in Austria.

42. In autumn 1995, an organization by the name of Arche-Plattform für Interkulturelle Projekte (Arch Platform for Intercultural Projects) was founded whose main focus is on the fight against anti-Semitism. An activity that was particularly successful was an exhibition entitled "Anne Frank - Eine Geschichte für Heute" (Anne Frank - A Story for Today) which was organized jointly by the Anne Frank Museum in Amsterdam and the Museum of History of the City of Vienna and which was shown at the Vienna City Hall in October 1996. The exhibition attracted a large audience, including many students, and will also be shown in other Austrian towns.

43. On the occasion of the fiftieth anniversary of the Second Republic in autumn 1995, the National Assembly passed a law instituting a National Fund for Victims of National Socialism. This measure has been met with general approval. Both chambers of the Austrian parliament (National and Federal Assembly) adopted a resolution in autumn 1997, stipulating that 5 May - the day of liberation of the Mauthausen concentration camp - shall serve as a memorial day against violence and racism in commemoration of the victims of National Socialism. The law encourages Austrian schools and military and civilian service institutions to celebrate the memorial day in an appropriate manner. The first occasion to celebrate this memorial day will be in 1998, and it is planned for both chambers of parliament to hold special sessions on that day.

44. The Austrian Broadcasting Corporation (ORF) is showing a special weekly TV programme entitled "Heimat, fremde Heimat" (Home, strange home) which is produced by the ORF's Department for Minority Issues and dedicated to the fight against racism and xenophobia.

45. Other institutions include the SOS Mitmensch (SOS Neighbour) Platform founded in January 1993 and the Vienna Intercultural Centre, which was established some 10 years ago. The focus of these organizations is exclusively on the fight against racism and xenophobia. The Vienna Intercultural Centre is a private association without political or religious affiliations which serves as an information and counselling centre for intercultural educational projects. It offers assistance in establishing international contacts between different cultures and, in particular, provides training for educators in connection with the organizational and tactical aspects of international cooperation projects.

46. Special mention should also be made of the Vienna Immigration Fund (Zuwanderer-Fonds), an organization whose task is to advise, assist and partly accommodate persons wishing to move to Vienna. The Fund's main functions are to offer immigrants counselling and information in their native language and to help them make use of the available facilities for integration in Austria.

47. Similar activities are also performed by the Vienna Integration Fund (Wiener Integrationsfond), an organization whose aim is to coordinate all initiatives, groups and associations promoting the coexistence of the local and immigrant population groups. The Fund supervises the development of concepts for the integration of foreigners and ensures that aliens are not put at a disadvantage when asserting their interests and exercising their rights and obligations and that they are fully integrated in the democratic procedure. It is therefore one of the Fund's most important tasks to detect the existing legal and structural impediments to integration and to work out concepts on how to overcome them and to establish criteria for the development of integration measures.